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EXAMINER
SCHNURR, JOHN R

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3   RECORD OF ORAL HEARING

4   UNITED STATES PATENT AND TRADEMARK OFFICE

5   _____

6   BEFORE THE BOARD OF PATENT APPEALS

7   AND INTERFERENCES

8   _____

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10   *Ex parte* JONG-HYUN YOON

11   _____

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13   Appeal 2009-014063

14   Application 10/667,383

15   Technology Center 2400

16   _____

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18   Oral Hearing Held: August 10, 2010

19   _____

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22   Before JOHN C. MARTIN, THOMAS S. HAHN and

23   ELENI MANTIS MERCADER, Administrative Patent Judges

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26   ON BEHALF OF THE APPELLANT:

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30   ROBERT J. WEBSTER, ESQ.

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1   The above-entitled matter came on for hearing on Tuesday,

2 August 10, 2010, commencing at 9:03 a.m., at the U.S. Patent and

3 Trademark Office, 600 Dulany Street, 9th Floor, Hearing Room B,

4 Alexandria, Virginia, before John Hundley, notary public.

5   THE USHER: Calendar number 17, Appeal Number 2009-

6 014063, Mr. Webster.

7   JUDGE MARTIN : Good morning, Mr. Webster. You can

8 proceed whenever you're ready.

9   MR. WEBSTER: Thank you, sir.

10   JUDGE MARTIN: Do you have a card for the reporter? Do

11 you have a business card?

12   MR. WEBSTER: No. I think I forgot it.

13   Good morning, ladies and gentlemen.

14   JUDGE MANTIS MERCADER: Good morning.

15   MR. WEBSTER: This particular application has got,

16 effectively, three sets of claims. The claims do not stand or fall together.

17 That's reflected by the fact that there are three separate rejections that have

18 been made by the Examiner.

19   The application is directed to a method for outputting

20 audio/visual streams onto a screen in response to a user's request by a whole

21 network that includes a server to output audio/video streams and plural

22 renderers connected to the server through a whole network. Claim 2 is the

23 method which includes a step where a renderer that is connected to a server

24 request and audio/visual stream, a step in which the server judges whether

25 the audio/visual streams can be outputted in response to the request from the

26 renderer, a step in which the server provides the audio/visual streams to the

1   renderer sequentially or simultaneously if the A/V stream can be outputted,

2   or outputting a server on availableness message to the renderer if the server

3   judges that the audio/visual streams cannot be outputted.

4   And the wherein clause recites that "In the step of judging

5   whether the A/V streams can be outputted, the server compares transmission

6   time of entire audio/visual streams and audio/visual stream transmission

7   time according to a defined reproduction capability of the server that's

8   required for reproducing audio/visual streams and then judges whether or

9   not those streams can be outputted." The Examiner in the final Office

10   Action and also in the Examiner's Answer indicates that in this wherein

11   clause, in the step of judging whether the A/V streams can be outputted, the

12   server compares transmission time of entire A/V streams and A/V stream

13   transmission times according to a defined reproduction capability refers to

14   Giammaressi, the primary reference.

15   And he says that Giammaressi in column 6, lines 14 through

16   18, discloses the band width required to transmit the requested program is

17   determined, and then the required band width is compared to the band width

18   available from the server resources in column 6, lines 24 through 44. We

19   have argued consistently that the only thing that Giammaressi teaches is with

20   respect to band width, and he cites 1997 Microsoft Computer Dictionary, to

21   define band width. And basically he says band width is transfer rate, how

22   much data can be transmitted in a given period of time. And what we're

23   saying is that's not what's being claimed.

24   We're claiming, specifically, that the server compares the

25   transmission time of entire A/V streams and compares that to a defined

26   reproduction capability of the server. And this is the main bone of

1   contention that we've had with respect to Giammaressi. We also have

2   argued throughout the proceeding that all of the secondary references that

3   are applied, the Goldthwaite reference that's applied to say that it's obvious

4   to apply Giammaressi to a home network and Seed that talks about a system

5   for distributing media from a server.

6   None of them actually talks about comparing transmission

7   times of entire audio/visual streams. We have made this a contention all

8   along and to our knowledge, the Examiner really hasn't pointed out where

9   this occurs. Now, what the Examiner does say is that what the applicant is

10 claiming is equivalent to what Giammaressi is doing, but we have contended

11 all along that just because something may be an equivalent, doesn't mean

12 that it's an obvious equivalent. And the other thing that we have also

13 contended is that none of the prior art teaches that these are equivalents.

14   Now, the Examiner apparently realizing that did say that, gee,

15 take a look at the fact that the applicant has two embodiments, and in one he

16 talks about transmission rate, preparing transmission rate; and, of course, our

17 response to that is you cannot use applicant's disclosure against applicant.

18 The analogy that I made in probably the Reply Brief was what about the

19 poor guy who came up with the first disc break disclosure and he said disc

20 breaks are equivalent to drum breaks. And the Examiner said, well, if

21 they're equivalents, obviously, you know, the disk breaks must be obvious.

22   Well, unfortunately, that type of teaching has to be in the prior

23 art, and I haven't found anything in the prior art, and we've focused on this

24 throughout the entire prosecution and I haven't seen where the Examiner has

25 come back and said, gee whiz, we teach band width, but we don't teach what

1   you have. But, gee, I think it's an equivalent. And he cites KSR to say you

2   can apply equivalents. I just don't find the equivalent in the prior art.

3   Now, with respect to the other claims that do not stand and fall

4   together, the Examiner actually turns to with respect to Claims 6 and 7, the

5   Examiner says, "Giammaressi, combined with the other two, Goldthwaite

6   and Seed, does not explicitly teach determining read time from a storage unit

7   based on a distance between two memory locations. And he turns to the

8   Lam reference, which he said is analogous art that discloses a system for

9   accessing data from a physical disk storage device, and he clearly teaches

10 determining seek times based on the distance between two memory

11 locations."

12   Unfortunately, Lam does this to optimize performance, and he

13 does not do it to judge whether the audio/visual streams can be outputted.

14 So it's really for a different purpose, and I don't think that one of ordinary

15 skill in the art would turn to Lam who discloses something like that for this

16 specific claim purpose.

17   With respect to Claim 5, well, actually Claims 5 through 9, the

18 Examiner indicates that the base reference combination doesn't explicitly

19 teach the A/V stream transmission time that it signifies the total amount of

20 time obtained by adding the seek time taken for the header to move to an

21 address where the A/V stream is positioned and a head activation time taken

22 for the header, which is actually the read-write head, to select a track in

23 which the A/V stream is stored, rotation latency time, et cetera.

24   So the Examiner turns to Bachmat, which he says is an

25 analogous art that discloses a system for accessing data from a physical disk

26 storage system. And if you take a look at Bachmat, Bachmat is concerned

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1   with avoiding concurrent use of a physical device; in other words, the hard

2   disk drive or hard disk drive array, by multiple applications. In other words,

3   Bachmat is doing what he does for an entirely different purpose. He is not

4   trying to determine the speed of reading and writing of A/V streams for the

5   purpose that it's being claimed. So we think that one of ordinary skill in the

6   art would not be properly motivated to turn to Bachmat to modify the base

7   reference combination, which doesn't recite the claimed subject matter in the

8   first place.

9   Are there any questions?

10   JUDGE MANTIS MERCADER: Counsel, you said about Lam

11   that it teaches the same thing but for a different purpose, but your Claim 2,

12   are you saying that Claim 2 distinguishes over that because of your last

13   limitation, the last sentence of your Claim 2, which says, "and then judges

14   whether the A/V streams can be outputted? " Is that where it distinguishes

15   over Lam?

16   MR. WEBSTER: No. Claim 2 distinguishes it, because the

17   server compares transmission time of entire A/V streams. In other words,

18   we don't think that that is taught in any of the references; and, the fact that

19   the Examiner says, well, this is equivalent to the use of band width, we just

20   don't think that that teaching is in the prior art. We don't find it in any of the

21   references. If it really were that obvious, we would think that it would be

22   there. At least it's not in the applied references of record.

23   JUDGE MANTIS MERCADER: Thank you.

24   JUDGE HAHN: I have no questions.

25   JUDGE MARTIN: No further questions. Thank you, Mr.

26   Webster.

1   MR. WEBSTER: Thank you, sir. Thank you, ma'am.

2   Whereupon, at 9:14 a.m., the proceedings were concluded.

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